

Chapter 90 TELECOMMUNICATIONS*

***Cross reference(s)**--Streets, sidewalks and other public property, ch. 74; utilities, ch. 94; franchises, app. A.

ARTICLE I. IN GENERAL

Sec. 90-1. Purpose.

The purposes of this ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. No. 2091, 10-22-02)

Sec. 90-2. Conflict.

Nothing in this ordinance shall be construed in such a manner as to conflict with the Act or other applicable law.

(Ord. No. 2091, 10-22-02)

Sec. 90-3. Terms Defined.

The terms used in this ordinance shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

City means the City of Muskegon.

City Commission means the City Commission of the City of Muskegon or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the City Commission.

City Manager means the City Manager or his or her designee.

Permit means a non-exclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the City for its telecommunications facilities.

All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.

MPSC means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term “Commission” in the Act.

Person means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

Public Right-of-Way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

Telecommunication Facilities or *Facilities* means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) or part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064,47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

Telecommunications Provider, Provider and *Telecommunications Services* mean those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064,47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a provider also includes all of the following:

- (a) A cable television operator that provides a telecommunications service.
- (b) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
- (c) A person providing broadband internet transport access service.

(Ord. No. 2091, 10-22-02)

Sec. 90-4. Permit Required.

(a) *Permit Required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this ordinance.

(b) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Clerk, one copy with the City Manager, and one copy with the City Attorney. Upon receipt, the City Clerk shall make three copies of the application and distribute a copy to the Departments of Public Works, Engineering, and Finance. Applications shall be complete and include all information required by the Act, including without limitation a route map

showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.

(c) *Confidential Information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(d) *Application Fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of \$500.00.

(e) *Additional Information.* The City Manager may request an applicant to submit such additional information which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

(f) *Previously Issued Permits.* Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the City under Section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of the Chapter.

(g) *Existing Providers.* Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

(Ord. No. 2091, 10-22-02)

Sec. 90-5. Issuance of Permit

(a) *Approval or Denial.* The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City Manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 4(b) of this ordinance for access to a public right-of-way within the City. Pursuant to Section 6(6) of the Act, the City Manager shall notify the MPSC when the City Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied.

The City Manager shall not unreasonably deny an application for a permit.

(b) *Form of Permit.* If an application for permit is approved, the City Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.

(c) *Conditions.* Pursuant to Section 15(4) of the Act, the City Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(d) *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the City Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

(Ord. No. 2091, 10-22-02)

Sec. 90-6. Construction/Engineering Permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the City without first obtaining a construction or engineering permit as required under chapter 90 of this Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. No. 2091, 10-22-02)

Sec. 90-7. Conduit or Utility Poles.

Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this ordinance does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. No. 2091, 10-22-02)

Sec. 90-8. Route Maps.

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the City, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the City. The route maps should be in paper and electronic format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

(Ord. No. 2091, 10-22-02)

Sec. 90-9. Repair of Damage.

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public

right-of-way in the City, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Ord. No. 2091, 10-22-02)

Sec. 90-10. Establishment and Payment of Maintenance Fee.

In addition to the non-refundable application fee paid to the City set forth in subsection 4(d) above, a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

(Ord. No. 2091, 10-22-02)

Sec. 90-11. Modification of Existing Fees.

In compliance with the requirements of Section 13(1) of the Act, the City hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the City also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The City shall provide each telecommunications provider affected by the fee with a copy of this ordinance, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the City's policy and intent, and upon application by a provider or discovery by the City, shall be promptly refunded as having been charged in error.

(Ord. No. 2091, 10-22-02)

Sec. 90-12. Savings Clause.

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 11 above shall be void from the date the modification was made.

(Ord. No. 2091, 10-22-02)

Sec. 90-13. Use of Funds.

Pursuant to Section 9(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes.

(Ord. No. 2091, 10-22-02)

Sec. 90-14. Annual Report.

Pursuant to Section 10(5) of the Act, the City Manager shall file an annual report

with the Authority on the use and disposition of funds annually distributed by the Authority.

(Ord. No. 2091, 10-22-02)

Sec. 90-15. Cable Television Operators.

Pursuant to Section 13(6) of the Act, the City shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(Ord. No. 2091, 10-22-02)

Sec. 90-16. Existing Rights.

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance shall not affect any existing rights that a telecommunications provider or the City may have under a permit issued by the City or under a contract between the City and a telecommunications provider related to the use of the public rights-of-way.

(Ord. No. 2091, 10-22-02)

Sec. 90-17. Compliance.

The City hereby declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The City shall comply in all respects with the requirements of the Act, including but not limited to the following:

- (a) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(c) of this ordinance;
- (b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this ordinance;
- (c) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500 application fee, in accordance with Section 4(g) of this ordinance;
- (d) Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the City, in accordance with Section 5(a) of this ordinance;
- (e) Notifying the MPSC when the City has granted or denied a permit, in accordance with Section 5(a) of this ordinance;
- (f) Not unreasonably denying an application for a permit, in accordance with Section 5(a) of this ordinance;
- (g) Issuing a permit in the form approved by the MPSC, with or without

additional or different permit terms, as provided in Section 5(b) of this ordinance;

- (h) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 5(c) of this ordinance;
- (i) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(d) of this ordinance;
- (j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this ordinance;
- (k) Providing each telecommunications provider affected by the City's right-of-way fees with a copy of this ordinance, in accordance with Section 11 of this ordinance;
- (l) Submitting an annual report to the Authority, in accordance with Section 14 of this ordinance; and
- (m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this ordinance.

(Ord. No. 2091, 10-22-02)

Sec. 90-18. Reservation of Police Powers.

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the City's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the City's authority to ensure and protect the health, safety, and welfare of the public.

(Ord. No. 2091, 10-22-02)

Sec. 90-19. Severability.

The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance.

(Ord. No. 2091, 10-22-02)

Sec. 90-20. Authorized City Officials.

The City Manager or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations for violations under this ordinance as provided by the City Code.

(Ord. No. 2091, 10-22-02)

Sec. 90-21. Municipal Civil Infraction.

A person who violates any provision of this ordinance or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to appropriate civil infraction fines. Nothing in this Section shall be construed to limit the remedies available to the City in the event of a violation by a person of this ordinance or a permit.

(Ord. No. 2091, 10-22-02)

Sec. 90-22. Repealer.

- (a) All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.

(Ord. No. 2091, 10-22-02)

Sec. 90-23. Effective Date.

This ordinance shall take effect on November 1, 2002.

(Ord. No. 2091, 10-22-02)

Secs. 90-24--90-30. Reserved.

ARTICLE II. COMMUNITY ANTENNA TELEVISION SYSTEMS

DIVISION 1. GENERALLY

Sec. 90-31. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cable Act means the Cable Communications Policy Act of 1984, Public Law 8-549, 98 Stat. 2779, 47 USC 521, et seq., enacted October 30, 1984, and all amendments thereto, including, but not limited to, Public Law 102-385, the Cable Television Consumer Protection Competition Act of 1992, enacted October 6, 1992.

FCC means the Federal Communications Commission.

Licensee means a person to whom a license has been issued pursuant to the provisions of this article.

Limited distributor means a multi-channel video programming distributor, or a distributor of television services by cable or other means, having facilities in any right-of-way of the city or on public property which limits its service to multiple-family dwellings under a single ownership or ownership by related entities, having occupancy capacity of 20 or more residential units, and further serves no more than 3,000 single-family residential units in the city. The qualification and status of an entity as a limited distributor may be reviewed from time to time to determine whether separate entities with related management or other significant relationships are operating community

antenna television systems serving more or different customers than those set forth in this subsection, and any company or individual found to be serving customers in excess of those set forth in this definition shall be no longer considered a limited distributor and shall be further subject to all other provisions of this act as applied to any community-wide cable television system.

Mnemonic phrase CATV means community antenna television systems, which include not only city-wide systems contemplated by this article but also distributors of video programming, multi-channel video programming distributors, as defined in the Cable Act.

(Code 1975, § 8-2)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 90-32. Licensee subject to police power of city and future regulations.

Any person duly licensed to operate a CATV system shall, at all times, be subject to all lawful exercise of the police power by the city and to such reasonable regulation as the city shall hereby, by resolution or ordinance, provide.

(Code 1975, § 8-3)

Sec. 90-33. Construction schedule.

Within one year from the issuance of its license under this article, the licensee shall have accomplished significant construction of its system. Thereafter, the licensee shall equitably and reasonably extend its energized trunk cable to include an additional 20 percent of its licensed area in the city each year. This section shall not apply to renewal licensees.

(Code 1975, § 8-5)

Sec. 90-34. Master antenna construction standards.

The licensee shall agree to construct the master antenna network in accordance with the building and electrical codes of this city.

(Code 1975, § 8-6)

Sec. 90-35. Placement of wires, cables, poles, etc., in streets.

Any licensee shall have the right, so long as its license is in force and effect, to utilize the streets of the city for the transmission of television signals as herein authorized from its antenna location or locations to the premises of subscribers. The licensee may erect all necessary wires, cables and appurtenances in such streets, provided that any such distribution system shall comply with all applicable laws and regulations and ordinances; and all of the licensee' s wires and cables suspended from poles in the street shall comply with the minimum clearances aboveground required for telephone lines, cables, wires and conduits. The placement of any necessary poles shall be subject to the approval of the city engineer. The licensee may, at its option, authorize the installation of such wires, cables, conduits, poles and appurtenances by others for the licensee' s use; and all such wires, cables, conduits, poles and appurtenances placed

or installed by others for the use of the licensee shall be subject to the same regulations as if the licensee installed them; and they shall exist and continue to exist solely by authority of the permission granted to such licensee.

(Code 1975, § 8-7)

Sec. 90-36. Structures to cause minimum interference with rights of adjoining property owners; utilization of existing poles.

All transmission and distribution structures, lines and equipment erected by the licensee or on its behalf within the city shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of such streets. Existing poles for electric and communication purposes shall be utilized wherever possible and practicable; provided, however, that this provision shall not grant any licensee the right to install all the necessary poles to operate its system if such licensee is, for any reason, unable to use such existing poles for electric or communication purposes.

(Code 1975, § 8-8)

Sec. 90-37. Duty to restore disturbed surfacing.

In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the licensee shall, at its own cost and expense and in a manner approved by the city engineer, replace and restore all pavement, sidewalk, driveway or other surfacing disturbed, in as good a condition as before such work was commenced.

(Code 1975, § 8-9)

Sec. 90-38. Removal and relocation of wires, cables, etc., when street widened or other city property altered or realigned.

If, at any time during the existence of a license granted under this article, the city shall lawfully widen, realign or otherwise alter the street right-of-way, or construct, reconstruct, realign, change the grade of or otherwise alter pavement or any water main, fire hydrant, sewer or appurtenance belonging to the city, the licensee or anyone acting on its behalf in connection with the use of streets, upon reasonable notice by the city and to the extent necessary, shall remove, relay and relocate its wires, cables, poles, underground conduits and other appurtenances at its own expense.

(Code 1975, § 8-10)

Sec. 90-39. Underground lines, cables and wires.

In conduit districts now or hereafter established by ordinances of the city, and as hereafter amended or altered, and in such other areas of the city in which telephone lines and electric utility lines are underground, all of the licensee's lines, cables and wires shall be underground. It is the policy of the city that underground installation, even where not required, is preferable to the addition of poles.

(Code 1975, § 8-11)

Sec. 90-40. Licensee's rules and regulations.

The licensee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the licensee to exercise its rights and perform its obligations under this article and to ensure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, or the rules of any state or federal regulatory agency, or the laws of the state.

(Code 1975, § 8-12)

Sec. 90-41. Availability of facilities; application to limited distributors.

- (a) Subject to the existence of suitably situated, available public rights-of-way and public utility easements, the licensee shall supply the facilities to all residents of the city who may request its service, who reside in any territory within the city' s boundaries that has a population density of at least 25 homes per strand mile from the trunk line existing at the time of such request. The licensee shall maintain a business office in the county open at all reasonable business hours to all such persons in the city who desire the services of the licensee.
- (b) This section shall not apply to a limited distributor.

(Code 1975, § 8-13)

Sec. 90-42. Limitation on service by system.

The services performed pursuant to licenses issued under this article shall not include the performance of repairing, servicing or selling television sets or television antennas; nor shall the licensee recommend service by others, except as directly related to cable installation and/or connection; provided, however, that no limitation is placed upon the licensee in complying with the FCC' s input selector switch requirements set forth in 47 CFR 76.66; and provided further, that no limitation is placed upon the licensee in the business of providing other communications services permitted by the FCC with respect to cable systems, or from distributing programming to home satellite dishes or other reception technology than broadcast television.

(Code 1975, § 8-16)

Sec. 90-43. Customer rates and charges.

The licensee' s rates for the provision of cable service and other service, including, but not limited to, ancillary charges relating thereto, shall not be regulated, except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC rules and regulations relating thereto. The licensee' s rates and charges for the provision of any service or equipment, including, but not limited to, basic service, pay service, second outlets, remote control units, converters, etc, are not established under this article and are not regulated.

(Code 1975, § 8-17)

Sec. 90-44. Preferential or discriminatory practices prohibited; right to furnish

free or discounted service in certain cases.

The licensee shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant preference or advantage to any person, nor subject any person to any prejudice or disadvantage; provided, however, that nothing in this article shall be deemed to prohibit the licensee' s discretion to establish discounts for senior citizens or shut-ins for the hearing impaired or to establish free-of-charge service to public or private educational institutions, hospitals, eleemosynary institutions and, to the extent not otherwise required under this article, to such public buildings as fire stations, police stations or city hall.

(Code 1975, § 8-18)

Sec. 90-45. Interruption of service for repairs, adjustments, etc.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the licensee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

(Code 1975, § 8-19)

Sec. 90-46. Books and records.

The city may review such of the licensee' s books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the terms of this article. Such records shall include, but shall not be limited to, records required to be kept by the licensee pursuant to the rules and regulations of the FCC, and financial information underlying the summary report pertaining to the license fee in section 90-71. Notwithstanding anything to the contrary set forth in this article, the licensee is not required to disclose personally identifiable subscriber information without the subscriber' s consent in recognition of Section 631 of the Cable Act, 47 USC 551, regarding the protection of subscriber privacy; nor shall the licensee be required to disclose its income tax returns or information underlying the preparation of any such returns. To the extent permitted by law, the city agrees to treat on a confidential basis any information disclosed by the licensee to it under this section. In so according confidential treatment, disclosure of the licensee' s records by the city shall be limited to only those of its employees, representatives and agents that have a need to know, and that are on a confidential relationship with the city.

(Code 1975, § 8-21)

Secs. 90-47--90-65. Reserved.

DIVISION 2. LICENSE

Sec. 90-66. Required.

No person shall own or operate a community antenna television system in the city, except by license pursuant to this division.

(Code 1975, § 8-34)

Sec. 90-67. Application generally.

Every person desiring to install, erect, construct, operate and maintain a community television antenna plant within the city shall make application in writing, signed by the applicant or his duly authorized agent, to the city clerk. Such application shall be accompanied by a general plan of the system, showing the location of the antenna and shall also be accompanied by a financial statement of the applicant.

(Code 1975, § 8-35)

Sec. 90-68. Application to contain indemnification agreements.

- (a) Each applicant shall, in his application, agree to save the city harmless from all loss sustained by the city on account of any suit, judgement, execution, claim or demand whatsoever, resulting from negligence on the part of the licensee in the construction, operation or maintenance of its CATV system in the city. The city shall notify any licensee within ten days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any negligence on the part of such licensee.
- (b) Each applicant in its application agrees to save the city harmless from all loss sustained by the city on account of any suit, judgement, execution, claim or demand whatsoever, resulting from a dispute over programming. The city shall notify any licensee within ten days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any allegedly improper or illegal program origination or transmission.

(Code 1975, § 8-36)

Sec. 90-69. Applicant's insurance.

- (a) Each applicant shall, in its application, demonstrate by certificate of insurance, which certificate shall include the city as named insured, that it is protected by liability insurance issued by an insurance company authorized to do business in the state against claims for property damage in the amount of \$1,000,000.00 for any one accident and for personal injuries in the amount of \$1,000,000.00 for a personal injury to any one person, and \$3,000,000.00 for all personal injuries resulting from any one accident.
- (b) The licensee shall not be held in default or noncompliance with the provisions of this article, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, refusals, acts of God, power outages or other events reasonably beyond its ability to control.

(Code 1975, § 8-37)

Sec. 90-70. Issuance.

The city clerk shall issue a license required by this division only upon receipt of an application which complies with all of the requirements of this article and upon approval by the city commission of the applicant's legal, character, financial, technical

and other qualifications, as well as the adequacy and feasibility of his construction arrangements after a full proceeding affording due process.

(Code 1975, § 8-38)

Sec. 90-71. Fee.

- (a) The licensee shall pay to the city, for the privilege of operating a CATV system under this article, a sum equivalent to five percent of the annual gross operating revenues taken in and received by it on all retail sales of television signals within the city for all service installations and reconnects.
- (b) The licensee shall pay to the city treasurer the license fee within 30 days after each half of the licensee's fiscal year, following its inception of service to subscribers located in the city. At the same time, the licensee shall file with the city clerk a summary report of the revenues upon which the license fee is based.

(Code 1975, § 8-39)

Sec. 90-72. Term of license.

A license issued under this division shall authorize the operation of a CATV system within the city, subject to the provisions of this article, for a period to be determined by the city commission, but in no event less than 15 years from the date of issuance. Renewals, unless revoked for cause, shall remain in force and effect for periods of at least 15 years.

(Code 1975, § 8-40)

Sec. 90-73. Transfer.

No sale, lease, sublease, assignment or other transfer of a license issued under this division shall be made, unless and until approved by resolution of the city commission after receipt of a written application for such transfer containing the same information as would be required of an original application for a license. Nor shall a transfer of a majority interest in the stock of the licensee, if the licensee is a corporation, or the addition or deletion of a general partner or partners of the licensee, if the licensee is a partnership, which in the aggregate would exceed 50 percent of the partnership interest, be made unless and until approved by resolution by the city commission. Approval of such sale, assignment, lease, sublease or other transfer shall not be unreasonably withheld.

(Code 1975, § 8-41)

Sec. 90-74. Revocation.

Failure by the licensee to substantially perform any of the material provisions of this article or the failure to substantially perform any of the material conditions or terms thereof, shall be cause for the revocation of its license and all rights under such license. The city clerk shall report such noncompliance in writing to the city commission, which, upon due notice to the licensee and after reasonable opportunity to place itself in compliance and to be heard on the charge of noncompliance, may revoke such license, provided, however, that any revocation proceeding under this section shall be governed

by the franchise compliance standards and procedures set forth in Section 626 of the Cable Act, 47 USC 546, attached hereto as Schedule 1.

(Code 1975, § 8-42)

Editor's note--Schedule 1 is not included in this Code but is on file and available for inspection in the offices of the city clerk.

Sec. 90-75. Renewal of license.

- (a) Any proceedings undertaken by the city that relate to the renewal of the licensee' s license shall be governed by and comply with the provisions of Section 626 of the Cable Act (codified at 47 USC 546) (as such existed as of the effective date of the Cable Act), unless the provisions set forth therein shall have been rendered inoperable by the provisions of subsequent law.
- (b) In addition to the procedure as set forth in Section 626(a) of the Cable Act, the city shall notify the licensee of the city' s preliminary assessment, regarding the identity of future cable-related community needs and interests, as well as the past performance of the licensee under the then current license term. The city' s preliminary assessment shall be provided to the licensee prior to the time that the four-month period referenced to in subsection (c) of Section 626 of the Cable Act is considered to begin. Notwithstanding anything to the contrary set forth in this section and consistent with subsection (h) of Section 626 of the Cable Act, 47 USC 546(h), at any time during the term of the then current license, the city and the licensee may undertake and finalize negotiations regarding renewal or extension of the then current license; and the city may grant a renewal or extension thereof. The terms set forth in this section shall be considered consistent with and subject to the express provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act, as such existed as of the effective date of the Cable Act, is attached hereto as Schedule 1 and is incorporated in this section by this reference. The provisions of this subsection notwithstanding, the city may grant extensions to the then existing license term to the extent appropriate under the circumstances, so long as such extensions are not in lieu of the licensee' s ultimate right to be considered for renewal under this article, and are consistent with applicable law.

(Code 1975, § 8-43)

Editor's note--See editor' s note following § 90-74.

Secs. 90-76--90-90. Reserved.

DIVISION 3. RATE REGULATION

Sec. 90-91. Definitions.

The following words, terms and phrases when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means the Communications Act of 1934, as amended (and specifically as

amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385), and as may be amended from time to time.

Associated equipment means all equipment and services subject to regulation pursuant to 47 CFR 76.923.

Basic cable service means basic service as defined in the FCC rules, and any other cable television service which is subject to rate regulation by the city pursuant to the act and the FCC rules.

FCC means the Federal Communications Commission.

FCC rules means all rules of the FCC promulgated from time to time pursuant to the act.

Increase in rates means an increase in rates or a decrease in programming or customer services.

All other words and phrases used in this division shall have the same meaning as defined in the act and FCC rules.

(Code 1975, § 8-51)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 90-92. Purpose; interpretation.

- (a) The purpose of this division is to:
 - (1) Adopt regulations consistent with the act and the FCC rules with respect to basic cable service rate regulation; and
 - (2) Prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the city.
- (b) This division shall be implemented and interpreted consistent with the act and FCC rules.

(Code 1975, § 8-52)

Sec. 90-93. Rate regulations promulgated by FCC.

In connection with the regulation of rates for basic cable service and associated equipment, the city shall follow all FCC rules.

(Code 1975, § 8-53)

Sec. 90-94. Filing; additional information; burden of proof.

- (a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the act and the FCC rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the act and the FCC rules. The cable operator shall file ten copies of the schedule or proposed increase with the city

clerk. For purposes of this division, the filing of the cable operator shall be deemed to have been made when at least ten copies have been received by the city clerk. The city commission may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator' s filing of the schedule of rates or a proposed increase.

- (b) In addition to information and data required by rules and regulations of the city pursuant to subsection (a) of this section, a cable operator shall provide all information requested by the city manager in connection with the city' s review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The city manager may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.
- (c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the act and the FCC rules including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923.

(Code 1975, § 8-54)

Sec. 90-95. Proprietary information.

- (a) If this division, any rules or regulations adopted by the city pursuant to subsection 90-94(a), or any request for information pursuant to subsection 90-94(b) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the city determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 USC 552. The city shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied:
 - (1) Where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or
 - (2) The cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.
- (b) Any interested party may file a request to inspect material withheld as proprietary with the city. The city shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any

appropriate forum. Disclosure will be stayed pending resolution of any appeal.

- (c) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitation, 47 CFR 0.459.

(Code 1975, § 8-55)

Sec. 90-96. Public notice; initial review of rates.

- (a) Upon the filing of ten copies of the schedule of rates or the proposed increase in rates pursuant to subsection 90-94(a), the city clerk shall publish a public notice in a newspaper of general circulation in the city which shall state that:
 - (1) The filing has been received by the city clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying; and
 - (2) Interested parties are encouraged to submit written comments on the filing to the city clerk not later than seven days after the public notice is published.
- (b) The city clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the city commission shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first class mail at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the city commission, then the city clerk shall mail a copy of the report by first class mail to the cable operator at least three days before the meeting at which the city commission shall first consider the schedule of rates or the proposed increase.

(Code 1975, § 8-56)

Sec. 90-97. Tolling order.

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after 30 days from the date of filing under subsection 90-94(a) unless the city commission (or other properly authorized body or official) tolls the 30-day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The city commission may toll the 30-day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

(Code 1975, § 8-57)

Sec. 90-98. Public notice; hearing on basic cable service rates following tolling of 30-day deadline.

- (a) If a written order has been issued pursuant to section 857 and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit

to the city any additional information required or requested pursuant to section 90-94. In addition, the city commission shall hold a public hearing to consider the comments of interested parties within the additional 90-day or 150-day period, as the case may be. The city clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the city which shall state:

- (1) The date, time, and place at which the hearing shall be held;
 - (2) Interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates; and
 - (3) Copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the clerk.
- (b) The public notice shall be published not less than 15 days before the hearing. In addition, the city clerk shall mail by first class mail a copy of the public notice to the cable operator not less than 15 days before the hearing.

(Code 1975, § 8-58)

Sec. 90-99. Staff or consultant report; written response.

Following the public hearing, the city manager shall cause a report to be prepared for the city commission which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the city commission pursuant to section 90-100. The city clerk shall mail a copy of the report to the cable operator by first class mail not less than 20 days before the city commission acts under section 90-100. The cable operator may file a written response to the report with the city clerk. If at least ten copies of the response are filed by the cable operator with the city clerk within ten days after the report is mailed to the cable operator, the city clerk shall forward it to the city commission.

(Code 1975, § 8-59)

Sec. 90-100. Rate decisions and orders.

The city commission shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC rules. If the city commission issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this section shall be issued within 90 days of the tolling order under section 90-97 in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under section 90-97 in all cases involving a cost-of-service showing.

(Code 1975, § 8-60)

Sec. 90-101. Refunds; notice.

The city commission may order a refund to subscribers as provided in 47 CFR 76.942. Before the city commission orders any refund to subscribers, the city clerk shall give at least seven days written notice to the cable operator by first class mail of the date, time, and place at which the city commission shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the city commission.

(Code 1975, § 8-61)

Sec. 90-102. Written decisions; public notice.

- (a) Any order of the city commission pursuant to section 90-100 or section 90-101 shall be in writing, shall be effective upon adoption by the city commission, and shall be deemed released to the public upon adoption. The clerk shall publish a public notice of any such written order in a newspaper of general circulation within the city which shall:
 - (1) Summarize the written decision; and
 - (2) State that copies of the text of the written decision are available for inspection or copying from the office of the clerk.
- (b) In addition, the city clerk shall mail a copy of the text of the written decision to the cable operator by first class mail.

(Code 1975, § 8-62)

Sec. 90-103. Rules and regulations.

In addition to rules promulgated pursuant to section 90-94, the city commission may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the act and the FCC rules.

(Code 1975, § 8-63)

Sec. 90-104. Failure to give notice.

The failure of the city clerk to give the notices or to mail copies of reports as required by this division shall not invalidate the decisions or proceedings of the city commission.

(Code 1975, § 8-64)

Sec. 90-105. Additional hearings.

In addition to the requirements of this division, the city commission may hold additional public hearings upon such reasonable notice as the city commission, in its sole discretion, shall prescribe.

(Code 1975, § 8-65)

Sec. 90-106. Additional powers.

The city shall possess all powers conferred by the act, the FCC rules, the cable operator' s franchise, and all other applicable law. The powers exercised pursuant to the act, the FCC rules, and this division shall be in addition to powers conferred by law or otherwise. The city may take any action not prohibited by the act and the FCC rules to protect the public interest in connection with basic cable service rate regulation.

(Code 1975, § 8-66)

Sec. 90-107. Failure to comply; remedies.

The city may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator' s franchise with the city) for failure to comply with the act, the FCC rules, any orders or determinations of the city pursuant to this division, any requirements of this division, or any rules or regulations promulgated under this division. Subject to applicable law, failure to comply with the act, the FCC rules, any orders or determinations of the city pursuant to this division, any requirements of this division, or any rules and regulations promulgated under this division, shall also be sufficient grounds for revocation or denial of renewal of a cable operator' s franchise.

(Code 1975, § 8-67)